

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3
4 In the Matter of)
5) CASE CLOSURE UNDER THE
6 MUR 6615) ENFORCEMENT PRIORITY
7 SAVE 9 480-459-6842) SYSTEM
8 JOHN DOE(S))
9

10 **GENERAL COUNSEL'S REPORT**

11
12 Under the Enforcement Priority System, the Commission uses formal scoring criteria
13 as a basis to allocate its resources and decide which matters to pursue. These criteria include
14 without limitation an assessment of the following factors: (1) the gravity of the alleged
15 violation, taking into account both the type of activity and the amount in violation; (2) the
16 apparent impact the alleged violation may have had on the electoral process; (3) the
17 complexity of the legal issues raised in the matter; and (4) recent trends in potential
18 violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and
19 developments of the law. It is the Commission's policy that pursuing relatively low-rated
20 matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to
21 dismiss cases under certain circumstances or, where the record indicates that no violation of
22 the Act or underlying Commission regulations has occurred, to make no reason to believe
23 findings.

24 The Office of General Counsel has scored MUR 6615 as a low-rated matter and has
25 determined that it should not be referred to the Alternative Dispute Resolution Office. For
26 the reasons set forth below, the Office of General Counsel recommends that the Commission
27 find no reason to believe that SAVE 9 480-459-6842 and associated John Doe(s)
28 (collectively "Save 9") violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(2), (b).¹

¹ Complaint Filed: July 25, 2012. No
Response was filed, because we were unable to locate and notify Respondents.

1 Complainant Brandie Reiner states that on or around July 19, 2012, she observed at
2 least 50 campaign signs near Tempe and Phoenix, Arizona that allegedly expressly advocated
3 the defeat of Krysten Sinema, a candidate in Arizona's 9th congressional district.² Compl. at
4 1. The signs allegedly bore the message: "Stay at home mom? Krysten Sinema says You're
5 a leech!"³ *Id.* The signs also included a "bar code"⁴ that viewers could scan to obtain
6 "proof." *Id.*

7 According to Reiner, the only "disclaimer" on the signs is the following line: "Paid
8 for by Save 9 480-459-6842." Compl. at 1. She states that she called the telephone number
9 to ascertain who was responsible for the signs and spoke to an individual who refused to
10 identify himself. *Id.*⁵ The individual allegedly acknowledged that he was associated with
11 Save 9, although he added that "nobody would know anything about it" because "it's
12 relatively new." *Id.* Reiner asserts that, based on her conversation with and a text message
13 received from the unidentified individual, Save 9 expressly advocates for the defeat of
14 Sinema and the election of Andrei Cherny, one of Sinema's primary election opponents. *Id.*
15 at 2; *see also* Compl., Ex. 2. Therefore, Reiner concludes that Save 9 and the individuals
16 associated with the signs violated the Act and Commission regulations by failing to identify

² Sinema won the primary election, which was held on August 28, 2012, and subsequently won the general election.

³ The Complaint includes copies of what appear to be two of the signs. *See* Compl., Ex. 1.

⁴ The bar code appears to be a "Quick Response Code," more commonly known as a "QR Code." QR Codes are two-dimensional bar codes that are used for storing and reading URLs or other information on smart phones. *See* http://www.oxforddictionaries.com/us/definition/american_english/QR-code; *see also* <http://www.pcmag.com/encyclopedia/term/61424/qr-code>.

⁵ The staff ascertained that 480-459-6842 appears to be an unpublished cell phone number, but was unable to obtain additional information.

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1 who paid for them and disclose whether they were authorized by another candidate or
2 candidate's committee. Compl. at 2.

3 Whenever any person makes a disbursement for a "public communication" that
4 "expressly advocates" the election or defeat of a clearly identified candidate, he or she must
5 include a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. §§ 110.11(a)(2), (b). Public
6 communications authorized and paid for by a candidate, an authorized committee of a
7 candidate, or an agent of either, must clearly state that the communications were paid for by
8 the authorized political committee.⁶ 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(b)(1). Public
9 communications authorized by a candidate, an authorized committee of a candidate, or an
10 agent of either but paid for by another person, must clearly state that the communications
11 were paid for by such person but authorized by the political committee. 2 U.S.C.
12 § 441d(a)(2); 11 C.F.R. § 110.11(b)(2). On the other hand, public communications not
13 authorized by a candidate, authorized committee, or an agent of either, must clearly state the
14 name and permanent address, telephone number or World Wide Web address of the person
15 who paid for the communications, and state that they were not authorized by any candidate or
16 candidate's committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3). Finally, under
17 Commission regulations, a communication expressly advocates the election or defeat of a
18 clearly identified federal candidate if it uses "phrases" such as "vote for the President," "re-
19 elect your Congressman," "vote against Old Hickory," or "defeat" accompanied by a picture

⁶ A public communication is "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. Printed campaign signs displayed outdoors, such as those at issue here, are a type of general public political advertising. *See, e.g.*, MUR 6546 (Michael J. Fox) (concluding that signs are included in the phrase "any other form of general public political advertising"); *see also* 11 C.F.R. § 110.11(c)(2)(i) (providing disclaimer specifications for "signs, posters, flyers," and other printed materials).

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1 of one or more candidate(s), among other enumerated examples, or “communications of
2 campaign slogan(s) or individual word(s), which in context can have no other reasonable
3 meaning than to urge the election or defeat of one or more clearly identified candidate(s),
4 such as posters, bumper stickers, advertisements, etc., which say “‘Nixon’s the One,’ ‘Carter
5 ’76,’ ‘Reagan/Bush’ or ‘Mondale!’”⁷ 11 C.F.R. § 100.22(a); *see also Buckley v. Valeo*,
6 424 U.S. 1, 44 n.52 (1976).

7 Although the campaign signs appear to be public communications, no disclaimer is
8 required under the Act because the signs do not contain express advocacy. Specifically, the
9 signs at issue do not contain express advocacy under section 100.22. They do not contain
10 any specific phrases, such as “vote for,” “vote against,” “re-elect,” or “defeat,” enumerated in
11 section 100.22(a). Moreover, the signs do not refer to an election and reasonable minds
12 could differ as to the meaning of the message conveyed to the public. *See, e.g.*, Factual and
13 Legal Analysis for MURs 5779 and 5805 (City of Santa Clarita) (Commission concluded that
14 banners thanking a sitting member of Congress for his legislative activities did not qualify as
15 express advocacy because they made no reference to an election and they contained “no
16 explicit electoral portion whatsoever,” let alone one that was “unmistakable, unambiguous
17 and suggestive of only one meaning”). *Id.* at 3.

18 Accordingly, the Office of General Counsel recommends that the Commission find
19 no reason to believe that SAVE 9 480-459-6842 and associated John Doe(s) violated

⁷ “Expressly advocating” also includes any communication that, when taken as a whole and with limited reference to external events, such as the proximity of the election, could only reasonably be interpreted as advocating the election or defeat of a clearly identified candidate because it contains an “electoral portion” that is “unmistakable, unambiguous, and suggestive of only one meaning” and about which “reasonable minds could not differ as to whether it encourages actions to elect or defeat” a clearly identified candidate or encourages some other kind of action. 11 C.F.R. § 100.22(b).

2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(2), (b). The Office of General Counsel also recommends that the Commission approve the attached Factual and Legal Analysis and the appropriate letter, and close the file.


RECOMMENDATIONS

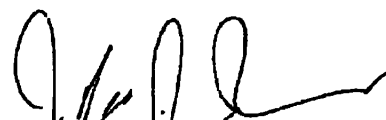
1. Find no reason to believe that SAVE 9 480-459-6842 violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(2), (b);
2. Approve the attached Factual and Legal Analysis and the appropriate letter; and
3. Close the file.

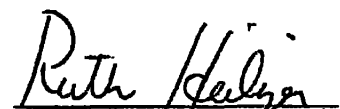
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